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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,844	01/15/2004	Todd S. Bowser	MATP-641US	5075
23122	7590	08/18/2006	EXAMINER	
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			YENKE, BRIAN P	
			ART UNIT	PAPER NUMBER

2622

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,844

Applicant(s)

BOWSER, TODD S.

Examiner

BRIAN P. YENKE

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 15 Jun 06/15 Jan04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. As described in the specification the computer-readable medium (as claimed in claims 21-23) may be a computer readable carrier, such as audio frequency, radio-frequency or optical carrier wave, thus the claims are not statutory since “a signal” is claimed (wherein the computer-readable medium is actually “a signal”).

Claims 21-23 are rejected under 35 U.S.C. 101 because of the reasons outlined in the 101 interim guidelines as stated below, pertaining to a signal.

#### **(c) Electro-Magnetic Signals**

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101.

First, a claimed signal is clearly not a "process" under § 101 because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures "relate to structural entities and can be grouped as 'product' claims in order to contrast them with process claims." 1 D. Chisum, Patents § 1.02 (1994). The three product classes have traditionally required physical structure or material.

"The term machine includes every mechanical device or combination of mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." *Coming v. Burden*, 56 U.S. (15 How.) 252, 267 (1854). A modern definition of machine would no doubt include electronic devices which perform functions. Indeed, devices such as flip-flops and computers are referred to in computer science as sequential machines. A claimed signal has no physical structure, does not itself perform any useful, concrete and tangible result and, thus, does not fit within the definition of a machine.

A "composition of matter" "covers all compositions of two or more substances and includes all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." *Shell Development Co. v. Watson*, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), *aff'd*, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958). A claimed signal is not matter, but a form of energy, and therefore is not a composition of matter.

The Supreme Court has read the term "manufacture" in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by

machinery." *Diamond v. Chakrabarty*, 447 U.S. 303, 308, 206 USPQ 193, 196-97 (1980) (quoting *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1, 11, 8 USPQ 131, 133 (1931), which, in turn, quotes the Century Dictionary). Other courts have applied similar definitions. See *American Disappearing Bed Co. v. Arnaelsteen*, 182 F. 324, 325 (9th Cir. 1910), cert. denied, 220 U.S. 622 (1911). These definitions require physical substance, which a claimed signal does not have. Congress can be presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Thus, Congress must be presumed to have been aware of the interpretation of manufacture in *American Fruit Growers* when it passed the 1952 Patent Act.

A manufacture is also defined as the residual class of product. 1 Chisum, § 1.02[3] (citing W. Robinson, *The Law of Patents for Useful Inventions* 270 (1890)).

A product is a tangible physical article or object, some form of matter, which a signal is not. That the other two product classes, machine and composition of matter, require physical matter is evidence that a manufacture was also intended to require physical matter. A signal, a form of energy, does not fall within either of the two definitions of manufacture. Thus, a signal does not fall within one of the four statutory classes of § 101.

On the other hand, from a technological standpoint, a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal.

These interim guidelines propose that such signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-5, 9-10, 14-15 and 20-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Bellwood et al., US 7,057,640.

In considering claims 1, 4-5, 9-10, 14-15 and 20-21,

Bellwood discloses a dynamic burnout imprinting protection shift circuit, which slowly moves the position of the screen content to ensure than no one area of the screen is unused for a long period of time. The image is shifted based upon the difference in aspect ratios between the incoming signal and the display (Figs 2a-3f). The format detector 402 (Fig 4) detects the aspect ratio of the incoming signal and the image shifter receives this information and provides an offset shift value which is received by the projection gun 406 and shift corrector 408 to slowly shift the image.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 6-8, 11-13, 16-19 and 22-23 rejected under 35 U.S.C. 103(a) as being unpatentable over Bellwood et al., US 7,057,640.

In considering claims 2, 11, 16 and 22,

Bellwood does not explicitly recite a zoom function/value, although the concept of reducing burnins on different sized aspect ratio signals/displays using such function (zoom) is notoriously well known in the art, and thus the examiner takes "OFFICIAL NOTICE" regarding such feature, since the zoom function provides the viewer with the option of sizing up/down the picture, while also reducing burnin of the display, both being motivations for implementing such conventional methods.

In considering claims 3 and 17,

Bellwood does not explicitly recite the synchronization of the received signal and adjusting the display regarding the sync signal. However, it is notoriously well known in the art to recognize that various signals have sync signals or not (analog/digital) as well as varying signals of varying rates, thus the concept of synchronously/locking onto the received signal is conventional practice as admitted via applicant's own disclosure.

In considering claims 6-7,

Bellwood does not explicitly recite "such that a human eye does not detect the movement", nor the predefined rate being less than two pixel rows per minute.

However, Bellwood does disclose that the image is shifted slowly, in order to provide a viewable image to the viewer. Thus the end result would be a system which would allow the viewer to view the program without detecting the movement (i.e. rapid motion back and forth or up/down, etc), thus Bellwood would clearly desire to not have the viewer moving their views due to a fast moving directional image.

Regard the two pixel rows per minute, the amount of update is a design choice, since there are no unexpected results by updating more pixel rows or less, thus the claims does not patentably distinguish itself from Bellwood, since anyone skilled in the art could modify the rate as desired.

In considering claims 8, 13, 19 and 23,

Although Bellwood recite the use of a data processing system or use of software/RAM/memory, Bellwood does not explicitly recite writing the image to a buffer areas prior to display, which is a notoriously well known feature in display systems, in order to efficiently/accurately update the display screen where the awaiting data is there to replace the currently displayed data, thus the examiner takes "OFFICIAL NOTICE" regarding such buffering for the above mentioned reasons.

In considering claim 12, 15

Bellwood does not explicitly reciting storing the last adjusted offset wherein at startup the offset is set to the last adjusted offset.

However, the concept of storing, the last sequence/offset is a conventional feature in system which allow the user/system to start off where they left off, thereby the being a variable default based upon setting prior to power down. The saving/storing of such data is notoriously



well known in the art in order to provide the user the ability start off where they left off (i.e. particular channel, particular type of display (PIP, single, double), zoomed etc...) thus the examiner takes "OFFICIAL NOTICE" pertaining to storing the last known settings, since their obvious modifications to one of ordinary skill in the art for the advantages noted above.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure—please see newly cited references on attached form PTO-892.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Yenke whose telephone number is (571)272-7359. The examiner work schedule is Monday-Thursday, 0730-1830 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, David L. Ometz, can be reached at (571)272-7593.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(571)-273-8300**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is

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B.P.Y.

15 August 2006



BRIAN P. YENKE  
PRIMARY EXAMINER